

Office of Operations, USDA

§ 2812.10

NOTE: Requests for items in FSC Groups or Classes other than the above should be referred to the agency head for consideration and approval.

(b) Excess personal property/equipment may be donated for cannibalization purposes, provided the donee submits a supporting statement which clearly indicates that cannibalizing the requested property for secondary use has greater potential benefit than utilization of the item in its existing form.

§ 2812.6 Title.

Title to excess personal property/equipment donated under this Part will automatically pass to the donee once the sponsoring agency receives the SF-122 indicating that the donee has received the property.

§ 2812.7 Costs.

Donated excess personal property/equipment is free of charge. However, the donee must pay all costs associated with packaging and transportation, unless the sponsoring agency has made other arrangements. The donee should specify the method of shipment.

§ 2812.8 Accountability and record-keeping.

USDA requires that property requested by a donee be placed into use by the donee within a year of receipt and used for at least 1 year thereafter. Donees must maintain accountable records for such property during this time period.

§ 2812.9 Disposal.

When the property is no longer needed by the donee, it may be used in support of other Federal projects or sold and the proceeds used for technical and scientific education and research activities.

§ 2812.10 Liabilities and losses.

USDA assumes no liability with respect to accidents, bodily injury, illness, or any other damages or loss related to excess personal property/equipment donated under this part. The donee is advised to insure or otherwise protect itself and others as appropriate.

PARTS 2813–2899 [RESERVED]

CHAPTER XXIX—OFFICE OF ENERGY POLICY AND NEW USES, DEPARTMENT OF AGRICULTURE

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PART 2900—ESSENTIAL AGRICULTURAL USES AND VOLUMETRIC REQUIREMENTS—NATURAL GAS POLICY ACT

Sec.

2900.1 General.

2900.2 Definitions.

2900.3 Essential agricultural uses.

2900.4 Natural gas requirements.

2900.6 Effective date.

AUTHORITY: Pub. L. 95-621, Nov. 9, 1978.

SOURCE: 44 FR 28786, May 17, 1979, unless otherwise noted.

§ 2900.1 General.

Section 401(c) of the Natural Gas Policy Act of 1978 (NGPA) requires the Secretary of Agriculture to determine the essential uses of natural gas, and to certify to the Secretary of Energy and the Federal Energy Regulatory Commission (FERC) the natural gas requirements, expressed either as volumes or percentages of use, of persons, or classes thereof, for essential agricultural uses in order to meet requirements of full food and fiber production. This rule covers establishments performing functions classed as essential agricultural uses whose natural gas supplies are distributed through the interstate pipeline systems even though such establishments may receive such gas directly from an intrastate pipeline or local distribution company. The rule provides to the Secretary of Energy (for purposes of Section 401(a) of the NGPA) and to the Federal Energy Regulatory Commission the following certifications:

(a) Essential agricultural uses of natural gas, expressed as classes of establishments that use gas for essential agricultural purposes; and

(b) Essential agricultural current requirements of natural gas, expressed as percentages of use.

§ 2900.2 Definitions.

(a) *Full food and fiber production* means the entire output of food and fiber produced for the domestic market, and for export, for building of reserves, and crops for soil building or conservation. This term also includes the processing of food and fiber into stable and storable products, and the

maintenance of food quality after processing.

(b) *Establishment* means an economic unit, generally at a single physical location where business is conducted or where service or industrial operations are performed (for example, a factory, mill, store, mine, farm, sales office, or warehouse). (Note: This is the same definition used in the Standard Industrial Classification Manual, 1972 edition).

(c) *Essential Agricultural Use Establishment* means any Establishment, or the portion of an Establishment, which performs (or has the capability to perform) activities specified in § 2900.3.

(d) *Current Natural Gas Requirements* means the amount of natural gas required by an Essential Agricultural Use Establishment to perform the activities devoted to full food and fiber production.

(Pub. L. 95-621, Nov. 8, 1979, 92 Stat. 3350, 15 U.S.C. 3301 *et seq.*)

[44 FR 28786, May 17, 1979, as amended at 46 FR 47216, Sept. 25, 1981]

§ 2900.3 Essential agricultural uses.

For purposes of Section 401(c) of the NGPA the following classes or portions of classes are certified as essential agricultural uses in order to meet the requirements of full food and fiber production:

Essential Agricultural Uses

Industry SIC No. and Industry Description

FOOD AND NATURAL FIBER PRODUCTION

01 Agricultural Production—Crops

02 Agricultural Production—Livestock Excluding 0272—Horses and Other Equines, and Nonfood Portions of 0279—Animal Specialties, Not Elsewhere Classified.

0723 Crop Preparation Services for Market, Except Cotton Ginning (see fiber processing).

4971 Irrigation Systems.

FERTILIZER AND AGRICULTURAL CHEMICALS

(PROCESS AND FEEDSTOCK USE ONLY)

1474 Potash, Soda, and Borate Materials.

1475 Phosphate Rock.

1477 Sulfur.

2819 Industrial Inorganic Chemicals, n.e.c. (Agricultural related only).

2865 Cyclic Crudes and Cyclic Intermediates, Dyes and Organic Pigments (Agricultural related only).

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- 2869 Industrial Organic Chemicals, n.e.c. (Agricultural related only).
- 287 Agricultural Chemicals.
- 2899 Chemicals and Chemical Preparations, n.e.c. (Salt—Feed grade only).
- 3274 Lime (Agricultural lime only).

FOOD AND NATURAL FIBER PROCESSING—FOOD

20 Food and Kindred Products Except 2047 Dog, Cat and Other Pet Food, and 2048 Prepared Feeds and Feed Ingredients for Animals and Fowls, Not Elsewhere Classified.

2869 Industrial Organic Chemicals (Monosodium Glutamate, Food-grade Citric Acid and Food-grade Enzymes only).

2899 Chemicals and Chemical Preparations, n.e.c. (Salt for food use only).

ANIMAL FEEDS, AND FOOD

(Process and Feedstock Use Only)

2047 Dog, Cat and Other Pet Food.

2048 Prepared Feeds and Feed Ingredients for Animals and Fowls, Not Elsewhere Classified.

NATURAL FIBER

0724 Cotton Ginning.

2141 Tobacco Stemming and Redrying.

2299 Textile Goods, n.e.c. (wool tops, combing and converting).

3111 Leather Tanning and Finishing.

FOOD QUALITY MAINTENANCE—FOOD PACKAGING

2641 Paper Coating and Glazing (food related only).

2643 Bags, Except Textile (food related only).

2645 Die Cut Paper and Paperboard (food related only).

2646 Pressed and Molded Pulp Goods (food related only).

2649 Converted Paper Products (food related only).

2651 Folding Paperboard Boxes (food related only).

2653 Corrugated and Solid Fiber Boxes (food related only).

2654 Sanitary Food Containers.

2655 Fiber Cans, Tubes, Drums, and Similar Products (food related only).

3079 Miscellaneous Plastic Products (food related only).

3221 Glass Containers (food related only).

3411 Metal Cans (food related only).

3412 Metal Shipping Barrels, Drums, Kegs, and Pails (food related only).

3466 Metal Crowns and Closures (Food Related Only).

3497 Metal Foil and Leaf (food related only).

Petroleum wax, synthetic petroleum wax and polyethylene wax (food grade only) as food containers.

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MARKETING AND DISTRIBUTION

4221 Farm Product Warehousing and Storage.

4222 Refrigerated Warehousing.

514 Groceries and Related Products.

5153 Farm Product Raw Materials—Grain.

54 Food Stores.

ENERGY PRODUCTION

(1) Agricultural production on set-aside acreage or acreage diverted from the production of a commodity (as provided under the Agricultural Act of 1949) to be devoted to the production of any commodity for conversion into alcohol or hydrocarbons for use as motor fuel or other fuels;

(2) Sugar refining for production of alcohol; and

(3) Distillation of fuel-grade alcohol from food grains and other biomass by facilities in existence on June 30, 1980 which do not have the installed capability to burn coal lawfully, for a period ending June 29, 1985.

(Pub. L. 95–621, Nov. 8, 1978, 92 Stat. 3350; 15 U.S.C. 3301 *et seq.*)

[44 FR 28786, May 17, 1979, as amended at 45 FR 5298, Jan. 23, 1980; 45 FR 45887, 45888, July 8, 1980; 45 FR 50550, July 30, 1980; 47 FR 25320, June 11, 1982; 48 FR 43670, Sept. 26, 1983; 49 FR 37733, Sept. 26, 1984]

§ 2900.4 Natural gas requirements.

For purposes of Section 401(c), NGPA, the natural gas requirements for each Essential Agricultural Use Establishment, whether such Essential Agricultural Use Establishment is in existence on the effective date of this rule or comes into existence thereafter, are certified to be 100 percent of Current Natural Gas Requirements.

§ 2900.6 Effective date.

This rule shall become effective on May 14, 1979.

PART 2901—ADMINISTRATIVE PROCEDURES FOR ADJUSTMENTS OF NATURAL GAS CURTAILMENT PRIORITY

Sec.

2901.1 Purpose and scope.

2901.2 Definitions.

2901.3 Oral presentation.

2901.4 Interpretations.

2901.5 Modifications and rescissions.

2901.6 Exceptions and exemptions.

2901.7 Review of denials.

2901.8 Judicial review.

2901.9 Effective date.

Office of Energy Policy and New Uses, USDA

§ 2901.4

AUTHORITY: Secs. 502, 507. Pub. L. 95-621, 92 Stat. 3397, 3405, Nov. 9, 1978.

SOURCE: 44 FR 55803, Sept. 28, 1979, unless otherwise noted.

§ 2901.1 Purpose and scope.

The purpose of this part 2901 is to provide procedures for the making of certain adjustments to the Secretary of Agriculture's Essential Agricultural Uses and Requirements regulations in accordance with section 502(c) of the Natural Gas Policy Act of 1978, in order to prevent special hardship, inequity, or an unfair distribution of burdens. The procedures in this part 2901 apply to any person seeking an interpretation of, modification of, rescission of, exception of, or exemption from the Essential Agricultural Uses and Requirements regulations in part 2900 of this chapter.

§ 2901.2 Definitions.

(a) *Person* means any individual, firm, sole proprietorship, partnership, association, company, joint venture or corporation.

(b) *Director* means the Director of the Office of Energy, U.S. Department of Agriculture.

(c) *Secretary* means the Secretary of the U.S. Department of Agriculture.

(d) *Adjustment* means an interpretation, modification, rescission of, exception to or exemption from the Essential Agricultural Uses and Requirements regulations, part 2900 of this chapter.

(e) *NGPA* means the Natural Gas Policy Act of 1978, Pub. L. 95-621.

(f) *Petitioner* means any person seeking an adjustment under this part 2901.

§ 2901.3 Oral presentation.

Any person seeking an adjustment under this part 2901 shall be given an opportunity to make an oral presentation of data, views and arguments in support of the request for an adjustment, provided that a request to make an oral presentation is submitted in writing with the request for the adjustment. An official of the Department of Agriculture shall preside at such oral presentation.

§ 2901.4 Interpretations.

(a) *Request for an interpretation.* (1) Any person seeking an interpretation of the Essential Agricultural Uses and Requirements regulations in part 2900 shall file a formal written request with the Director. The request should contain a full and complete statement of all relevant facts pertaining to the circumstances, act or transaction that is the subject of the request and to the action sought, and should state the special hardship, inequity, or unfair distribution of burdens that will be prevented by the interpretation sought and why the interpretation is consistent with the purposes of NGPA. The Director shall publish a notice in the FEDERAL REGISTER advising the public that a request for an interpretation has been received and that written comments will be accepted with respect thereto, if received within 20 days of the notice. The FEDERAL REGISTER notice will provide that copies of the request for interpretation from which confidential information has been deleted in accordance with paragraph (a)(2) of this section may be obtained from the petitioner.

(2) If the petitioner wishes to claim confidential treatment for any information contained in the request or other documents submitted under this part 2901, such person shall file together with the document a second copy of the document from which has been deleted the information for which such person wishes to claim confidential treatment. The petitioner shall indicate in the original document that it is confidential or contains confidential information and may file a statement specifying the justification for non-disclosure of the information for which non-disclosure is sought. The Director shall consider such requests, and subject to the Freedom of Information Act, 5 U.S.C. 552 and other applicable laws and regulations, shall treat such information as confidential.

(b) *Investigations.* The Director may initiate an investigation of any statement in a request and utilize in his evaluation any relevant facts obtained in such investigation. The Director may accept submissions from third persons relevant to any request for interpretation provided that the petitioner

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is afforded an opportunity to respond to all such submissions. In evaluating a request for interpretation, the Director may consider any other source of information.

(c) *Applicability.* Any interpretation issued hereunder shall be issued on the basis of the information provided on the request, as supplemented by other information brought to the attention of the Director during the consideration of the request. The interpretation shall, therefore, depend for its authority on the accuracy of the factual statement and may be relied upon only to the extent that the facts of the actual situation correspond to those upon which the interpretation was based.

(d) *Issuance of an interpretation.* Upon consideration of the request for interpretation and other relevant information received or obtained by the Director, the Director may issue a written interpretation. A copy of the written interpretation shall be provided to FERC and the Secretary of Energy. Notice of the issuance of the written interpretation shall be published in the FEDERAL REGISTER. The granting of a request for issuance of an interpretation shall be considered final agency action for purposes of judicial review under § 2901.8.

(e) *Denial of an interpretation.* An interpretation shall be considered denied for purpose of review of such denial under § 2901.7 only if:

(1) The Director notifies the petitioner in writing that the request is denied and that an interpretation will not be issued; or

(2) The Director does not respond to a request for an interpretation, by (i) issuing an interpretation, or (ii) giving notice of when an interpretation will be issued within 45 days of the date of receipt of the request, or within such extended time as the Director may prescribe by written notice within the 45-day period.

(f) For purposes of this part 2901 the word *interpretation* shall not be deemed to include a simple clarification of an actual or purported ambiguity in part 2900. The Director reserves the right to determine whether a request involves simple clarification and shall advise the requester of his decision.

§ 2901.5 Modifications and rescissions.

(a) *Request for modification or rescission.* (1) Any person seeking a modification or a rescission of the Essential Agricultural Uses and Requirements regulations of part 2900 shall file a formal written request with the Director. The request shall contain a full and complete statement of all relevant facts pertaining to the circumstance, act or transaction that is the subject of the request and to the action sought. The request should state the special hardship, inequity or unfair distribution of burdens that will be prevented by making the modification or rescission.

(2) If the petitioner wishes to claim confidential treatment for any information contained in the request or other documents submitted under this part 2901, such person shall file together with the document a second copy of the document from which has been deleted the information for which such person wishes to claim confidential treatment. The petitioner shall indicate in the original document that it is confidential or contains confidential information and may file a statement specifying the justification for non-disclosure of the information for which non-disclosure is sought. The Director shall consider such requests, and subject to the Freedom of Information Act, 5 U.S.C. 552 and other applicable laws and regulations, shall treat such information as confidential.

(3) The request shall be filed as a petition for rulemaking and treated in accordance with the procedures, as applicable, of 7 CFR part 1, subpart B.

(b) *Institution of rulemaking.* Upon consideration of the request for modification or rescission and other relevant information received or obtained by the Director, the Director may institute rulemaking proceedings in accordance with the Administrative Procedures Act 5 U.S.C. 551 *et seq.* and applicable regulations.

(c) *Denial of a modification or rescission.* If the Director (1) denies the request for modification or rescission in writing by notifying the petitioner that he does not intend to institute rulemaking proceedings as proposed and stating the reasons therefor, or (2) does not respond to a request for a

modification or rescission in accordance with paragraph (b) of this section or (3) notifies the petitioner in writing that the matter is under continuing consideration and that no decision can be made at that time because of the inadequacy of available information, changing circumstances or other reasons as set forth therein, within 45 days of the date of the receipt thereof, or within such extended time as the Director may prescribe by written notice within that 45-day period, the request shall be considered denied for the purpose of review of such denial under § 2901.7.

§ 2901.6 Exceptions and exemptions.

(a) *Request for exception or exemption.*

(1) Any person seeking an exception or exemption from the Essential Agricultural Uses and Requirements regulations in part 2900 shall file a formal written request with the Director. The request shall contain a full and complete statement of all relevant facts pertaining to the circumstance, act, or transaction that is the subject of the request and to the action sought. The request should state the special hardship, inequity or unfair distribution of burdens that will be prevented by making the exception or exemption. The Director shall publish a notice in the FEDERAL REGISTER advising the public that a request for an exception or exemption has been received and that written comments will be accepted with respect thereto if received within 20 days of the notice. The FEDERAL REGISTER notice will provide that copies of the request from which confidential information has been deleted in accordance with paragraph (a)(2) of this section may be obtained from the petitioner. The Petitioner shall be afforded an opportunity to respond to such submissions.

(2) If the petitioner wishes to claim confidential treatment for any information contained in the request or other documents submitted under this part 2901, such person shall file together with the document a second copy of the document from which has been deleted the information for which such person wishes to claim confidential treatment. The petitioner shall indicate in the original document that it

is confidential or contains confidential information and may file a statement specifying the justification for non-disclosure of the information for which non-disclosure is sought. The Director shall consider such requests, and subject to the Freedom of Information Act, 5 U.S.C. 552 and other applicable laws and regulations, shall treat such information as confidential.

(b) *Decision and order.* Upon consideration of the request for an exception or exemption and other relevant information received or obtained during the proceedings, the Director shall issue an order granting or denying the request. The Director shall publish a notice in the FEDERAL REGISTER of the issuance of a decision and order on the request. The granting of a request for an exception or exemption shall be considered final agency action for purposes of judicial review under § 2901.8.

(c) *Denial of an exception or exemption.* A request for an exception or exemption shall be considered denied for purposes of review of such denial under § 2901.7 only if:

(1) The Director has notified the petitioner in writing that the request is denied under paragraph (b) of this section; or

(2) The Director does not respond to a request for an exception or exemption by (i) granting the request for an exception or exemption under paragraph (b) of this section or (ii) giving notice of when a decision will be made within 45 days of the receipt of the request, or with such extended time as the Director may prescribe by written notice within the 45-day period.

§ 2901.7 Review of denials.

(a) *Request for review.* (1) Any person aggrieved or adversely affected by a denial of a request for any interpretation under § 2901.4 may request a review of the denial by the Secretary, within 30 days from the date of the denial.

(2) Any person aggrieved or adversely affected by a denial of a request for a modification or rescission under § 2901.5, may request a review of the denial by the Secretary within 30 days from the date of the denial.

(3) Any person aggrieved or adversely affected by a denial of a request for an exception or an exemption under

§ 2901.8

§ 2901.6, may request a review of the denial by the Secretary within 30 days from the date of the denial.

(b) *Procedures.* Any request for review under § 2901.7(a) shall be in writing and shall set forth the specific ground upon which the request is based. There is no final agency action for purposes of judicial review under § 2901.8 until that request has been acted upon. If the request for review has not been acted upon within 30 days after it is received, the request shall be deemed to have been denied. That denial shall then constitute final agency action for the purpose of judicial review under § 2901.8.

§ 2901.8 Judicial review.

Any person aggrieved or adversely affected by a final agency action taken on a request for an adjustment under this section may obtain judicial review in accordance with section 506 of the Natural Gas Policy Act of 1978.

§ 2901.9 Effective date.

This rule shall become effective on October 29, 1979.

PART 2902 [RESERVED]

PART 2903—BIODIESEL FUEL EDUCATION PROGRAM

Subpart A—General Information

Sec.

- 2903.1 Applicability of regulations.
- 2903.2 Purpose of the program.
- 2903.3 Eligibility.
- 2903.4 Indirect costs.
- 2903.5 Matching requirements.

Subpart B—Program Description

- 2903.6 Project types.
- 2903.7 Project objectives.

Subpart C—Preparation of an Application

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- 2903.14 Conflicts of interest and confidentiality.

Subpart E—Award Administration

- 2903.15 General.
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- 2903.18 Access to review information.
- 2903.19 Use of funds; changes.
- 2903.20 Reporting requirements.
- 2903.21 Applicable Federal statutes and regulations.
- 2903.22 Confidential aspects of applications and awards.
- 2903.23 Definitions.

AUTHORITY: 7 U.S.C. 8104; 5 U.S.C. 301.

SOURCE: 68 FR 56139, Sept. 30, 2003, unless otherwise noted.

Subpart A—General Information

§ 2903.1 Applicability of regulations.

(a) The regulations of this part only apply to Biodiesel Fuel Education Program grants awarded under the provisions of section 9004 of the Farm Security and Rural Investment Act of 2002 (FSRIA) (7 U.S.C. 8104) which authorizes the Secretary to award competitive grants to eligible entities to educate governmental and private entities that operate vehicle fleets, other interested entities (as determined by the Secretary), and the public about the benefits of biodiesel fuel use. Eligibility is limited to nonprofit organizations and institutions of higher education (as defined in sec. 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)) that have demonstrated both knowledge of biodiesel fuel production, use, or distribution and the ability to conduct educational and technical support programs. The Secretary delegated this authority to the Chief Economist, who in turn delegated this authority to the Director of OEPNU.

(b) The regulations of this part do not apply to grants awarded by the Department of Agriculture under any other authority.

§ 2903.2 Purpose of the program.

The Biodiesel Fuel Education Program seeks to familiarize public and

private vehicle fleet operators, other interested entities, and the public, with the benefits of biodiesel, a relatively new fuel option in the United States. It will also address concerns previously identified by fleet operators and other potential users of this alternative fuel, including the need to balance the positive environmental, social and human health impacts of biodiesel utilization with the increased per gallon cost to the user. It is the Program's goal to stimulate biodiesel demand and encourage the further development of a biodiesel industry in the United States.

§ 2903.3 Eligibility.

(a) Eligibility is limited to nonprofit organizations and institutions of higher education that have demonstrated both knowledge of biodiesel fuel production, use, or distribution and the ability to conduct educational and technical support programs.

(b) Award recipients may subcontract to organizations not eligible to apply provided such organizations are necessary for the conduct of the project.

§ 2903.4 Indirect costs.

(a) For the Biodiesel Fuel Education Program, applicants should use the current indirect cost rate negotiated with the cognizant Federal negotiating agency. Indirect costs may not exceed the negotiated rate. If no indirect cost rate has been negotiated, a reasonable dollar amount for indirect costs may be requested, which will be subject to approval by USDA. In the latter case, if a proposal is recommended for funding, an indirect cost rate proposal must be submitted prior to award to support the amount of indirect costs requested.

(b) A proposer may elect not to charge indirect costs and, instead, charge only direct costs to grant funds. Grantees electing this alternative will not be allowed to charge, as direct costs, indirect costs that otherwise would be in the grantee's indirect cost pool under the applicable Office of Management and Budget cost principles. Grantees who request no indirect costs will not be permitted to revise their budgets at a later date to charge indirect costs to grant funds.

§ 2903.5 Matching requirements.

There are no matching funds requirements for the Biodiesel Fuel Education Program and matching resources will not be factored into the review process as evaluation criteria.

Subpart B—Program Description

§ 2903.6 Project types.

OEPNU intends to award continuation grants to successful Biodiesel Fuel Education Program applicants. A continuation grant is a grant instrument by which the Department agrees to support a specified level of effort for a predetermined project period with a statement of intention to provide additional support at a future date, provided that performance has been satisfactory, appropriations are available for this purpose, and continued government support would be in the best interest of the Federal government and the public. If these three elements are met, OEPNU plans to provide additional support to the funded project(s).

§ 2903.7 Project objectives.

(a) Successful projects will develop practical indicators or milestones to measure their progress towards achieving the following objectives:

(1) Enhance current efforts to collect and disseminate biodiesel information;

(2) Coordinate with other biodiesel educational or promotional programs, and with Federal, State and local programs aimed at encouraging biodiesel use, including the EPAct program;

(3) Create a nationwide networking system that delivers biodiesel information to targeted audiences, including users, distributors and other infrastructure-related personnel;

(4) Identify and document the benefits of biodiesel (e.g., lifecycle costing); and

(5) Gather data pertaining to information gaps and develop strategies to address the gaps.

(b) [Reserved]

Subpart C—Preparation of an Application

§ 2903.8 Program application materials.

OEPNU will publish periodic program announcements to notify potential applicants of the availability of funds for competitive continuation grants. The program announcement will provide information about obtaining program application materials.

§ 2903.9 Content of an application.

(a) Applications should be prepared following the guidelines and the instructions in the program announcement. At a minimum, applications shall include: a proposal cover page, project summary, project description, information about key personnel, documentation of collaborative arrangements, information about potential conflicts-of-interest, budget forms and a budget narrative, information about current and pending support, and assurance statements.

(b) Proper preparation of applications will assist reviewers in evaluating the merits of each application in a systematic, consistent fashion. Specific instructions regarding additional application content requirements and the ordering of application contents will be included in the program announcement. These will include instructions about paper size, margins, font type and size, line spacing, page numbering, the inclusion of illustrations, and electronic submission.

§ 2903.10 Submission of an application.

The program announcement will provide the deadline date for submitting an application, the number of copies of each application that must be submitted, and the address to which proposals must be submitted.

§ 2903.11 Acknowledgment of applications.

The receipt of all applications will be acknowledged. Applicants who do not receive an acknowledgment within 60 days of the submission deadline should contact the program contact indicated on the program announcement. Once the application has been assigned a

proposal number, that number should be cited on all future correspondence.

Subpart D—Application Review and Evaluation

§ 2903.12 Application review.

(a) Reviewers will include government and non-government individuals. All reviewers will be selected based upon training and experience in relevant scientific, extension, or education fields, taking into account the following factors:

(1) The level of relevant formal scientific, technical education, or extension experience of the individual, as well as the extent to which an individual is engaged in relevant research, education, or extension activities; and

(2) The need to include as reviewers experts from various areas of specialization within relevant scientific, education, or extension fields.

(b) In addition, when selecting non-government reviewers, the following factors will be considered:

(1) The need to include as reviewers other experts (e.g., producers, range or forest managers/operators, and consumers) who can assess relevance of the applications to targeted audiences and to program needs;

(2) The need to include as reviewers experts from a variety of organizational types (e.g., colleges, universities, industry, state and Federal agencies, private profit and non-profit organizations) and geographic locations;

(3) The need to maintain a balanced composition of reviewers with regard to minority and female representation and an equitable age distribution; and

(4) The need to include reviewers who can judge the effective usefulness to producers and the general public of each application.

(c) Authorized departmental officers will compile application reviews and recommend awards to OEPNU. OEPNU will make final award decisions.

§ 2903.13 Evaluation criteria.

(a) The following evaluation criteria will be used in reviewing applications submitted for the Biodiesel Fuel Education Program:

(1) Relevance of proposed project to current and future issues related to the production, use, distribution, fuel quality, and fuel properties of biodiesel, including:

(i) Demonstrated knowledge about markets, state initiatives, impacts on local economies, regulatory issues, standards, and technical issues;

(ii) Demonstrated knowledge about issues associated with developing a biodiesel infrastructure; and

(iii) Quality and extent of stakeholder involvement in planning and accomplishment of program objectives.

(2) Reasonableness of project proposal, including:

(i) Sufficiency of scope and strategies to provide a consistent message in keeping with existing standards and regulations;

(ii) Adequacy of Project Description, suitability and feasibility of methodology to develop and implement program;

(iii) Clarity of objectives, milestones, and indicators of progress;

(iv) Adequacy of plans for reporting, assessing and monitoring results over project's duration; and

(v) Demonstration of feasibility, and probability of success.

(3) Technical quality of proposed project, including:

(i) Suitability and qualifications of key project personnel;

(ii) Institutional experience and competence in providing alternative fuel education, including:

(A) Demonstrated knowledge about programs involved in alternative fuel research and education;

(B) Demonstrated knowledge about other fuels, fuel additives, engine performance, fuel quality and fuel emissions;

(C) Demonstrated knowledge about Federal, State and local programs aimed at encouraging alternative fuel use;

(D) Demonstrated ability in providing educational programs and developing technical programs; and

(E) Demonstrated ability to analyze technical information relevant to the biodiesel industry.

(iii) Adequacy of available or obtainable resources; and

(iv) Quality of plans to administer and maintain the project, including collaborative efforts, evaluation and monitoring efforts.

(b) [Reserved]

§ 2903.14 Conflicts of interest and confidentiality.

(a) During the peer evaluation process, extreme care will be taken to prevent any actual or perceived conflicts of interest that may impact review or evaluation. Determinations of conflicts of interest will be based on the academic and administrative autonomy of an institution. The program announcement will specify the methodology for determining such autonomy.

(b) Names of submitting institutions and individuals, as well as application content and peer evaluations, will be kept confidential, except to those involved in the review process, to the extent permitted by law. In addition, the identities of peer reviewers will remain confidential throughout the entire review process. Therefore, the names of the reviewers will not be released to applicants. At the end of the fiscal year, names of reviewers will be made available in such a way that the reviewers cannot be identified with the review of any particular application.

Subpart E—Award Administration

§ 2903.15 General.

Within the limit of funds available for such purpose, the Authorized Departmental Officer (ADO) shall make grants to those responsible, eligible applicants whose applications are judged most meritorious under the procedures set forth in this part. The date specified by the ADO as the effective date of the grant shall be no later than September 30 of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. It should be noted that the project need not be initiated on the grant effective date, but as soon thereafter as practical so that project goals may be attained within the funded project period. All funds granted by OEPNU under this program shall be expended solely for the purpose for which the funds are granted in accordance

§ 2903.16

with the approved application and budget, the regulations of this part, the terms and conditions of the award, the applicable Federal cost principles, and the applicable Department assistance regulations (including part 3019 of this title).

§ 2903.16 Organizational management information.

Specific management information relating to an applicant shall be submitted on a one-time basis as part of the responsibility determination prior to the award of a grant identified under this program, if such information has not been provided previously. Copies of forms recommended for use in fulfilling these requirements will be provided as part of the preaward process.

§ 2903.17 Award document and notice of award.

(a) The award document will provide pertinent instructions and information including, at a minimum, the following:

- (1) Legal name and address of performing organization or institution to whom OEPNU has issued an award under this program;
 - (2) Title of project;
 - (3) Name(s) and institution(s) of PDs chosen to direct and control approved activities;
 - (4) Identifying award number assigned by the Department;
 - (5) Project period;
 - (6) Total amount of Departmental financial assistance approved by OEPNU during the project period;
 - (7) Legal authority(ies) under which the award is issued;
 - (8) Appropriate Catalog of Federal Domestic Assistance (CFDA) number;
 - (9) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the award; and
 - (10) Other information or provisions deemed necessary by OEPNU and the Authorized Departmental Officer to carry out the awarding activities or to accomplish the purpose of a particular award.
- (b) [Reserved]

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Subpart F—Supplementary Information

§ 2903.18 Access to review information.

Copies of reviews, not including the identity of reviewers, and a summary of the comments will be sent to the applicant PD after the review process has been completed.

§ 2903.19 Use of funds; changes.

(a) *Delegation of fiscal responsibility.* Unless the terms and conditions of the award state otherwise, the awardee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of award funds.

(b) *Changes in project plans.* (1) The permissible changes by the awardee, PD(s), or other key project personnel in the approved project shall be limited to changes in methodology, techniques, or other similar aspects of the project to expedite achievement of the project's approved goals. If the awardee or the PD(s) is uncertain as to whether a change complies with this provision, the question must be referred to the Authorized Departmental Officer (ADO) for a final determination. The ADO is the signatory of the award document, not the program contact.

(2) Changes in approved goals or objectives shall be requested by the awardee and approved in writing by the ADO prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

(3) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the awardee and approved in writing by the ADO prior to effecting such changes.

(4) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the awardee and approved in writing by the ADO prior to effecting such transfers, unless prescribed otherwise in the terms and conditions of the award.

(5) *Changes in project period.* The project period may be extended by

OEPNU without additional financial support, for such additional period(s) as the ADO determines may be necessary to complete or fulfill the purposes of an approved project, but in no case shall the total project period exceed five years. Any extension of time shall be conditioned upon prior request by the awardee and approval in writing by the ADO, unless prescribed otherwise in the terms and conditions of award.

(6) *Changes in approved budget.* Changes in an approved budget must be requested by the awardee and approved in writing by the ADO prior to instituting such changes if the revision will involve transfers or expenditures of amounts requiring prior approval as set forth in the applicable Federal cost principles, Departmental regulations, or award.

§ 2903.20 Reporting requirements.

The award document will give instructions regarding the submission of progress reports, including the frequency and required contents of the reports.

§ 2903.21 Applicable Federal statutes and regulations.

Several Federal statutes and regulations apply to grant applications considered for review and to project grants awarded under this program. These include, but are not limited to:

7 CFR Part 1, subpart A—USDA implementation of the Freedom of Information Act.

7 CFR Part 3—USDA implementation of OMB Circular No. A-129 regarding debt collection.

7 CFR Part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR Part 3017—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

7 CFR Part 3018—USDA implementation of Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans.

7 CFR Part 3019—USDA implementation of OMB Circular A-110, Uniform Administrative Requirements for Grants and Other Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR Part 3052—USDA implementation of OMB Circular No. A-133, Audits of States, Local Governments, and Non-profit Organizations. 29 U.S.C. 794 (sec. 504, Rehabilitation Act of 1973) and 7 CFR part 15b (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs. 35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

§ 2903.22 Confidential aspects of applications and awards.

When an application results in an award, it becomes a part of the record of USDA transactions, available to the public upon specific request. Information that the Secretary determines to be of a confidential, privileged, or proprietary nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as confidential, privileged, or proprietary should be clearly marked within the application. The original copy of an application that does not result in an award will be retained by the Agency for a period of one year. Other copies will be destroyed. Such an application will be released only with the consent of the applicant or to the extent required by law. An application may be withdrawn at any time prior to the final action thereon.

§ 2903.23 Definitions.

For the purpose of this program, the following definitions are applicable:

Authorized departmental officer or *ADO* means the Secretary or any employee of the Department who has the authority to issue or modify grant instruments on behalf of the Secretary.

Authorized organizational representative or *AOR* means the president or chief executive officer of the applicant organization or the official, designated by the president or chief executive officer of the applicant organization, who has the authority to commit the resources of the organization.

Biodiesel means a monoalkyl ester that meets the requirements of an appropriate American Society for Testing and Materials Standard.

Budget period means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

Department or *USDA* means the United States Department of Agriculture.

Education activity means an act or process that imparts knowledge or skills through formal or informal training and outreach.

Grant means the award by the Secretary of funds to an eligible recipient for the purpose of conducting the identified project.

Grantee means the organization designated in the award document as the responsible legal entity to which a grant is awarded.

Institution of higher education, as defined in sec. 101 of the Higher Education Act of 1965 (20 U.S.C. 1001), means an educational institution in any State that:

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which the institution awards a bachelor's degree or provides not less than a two-year program that is acceptable for full credit toward such a degree;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary of Education for the granting of preaccreditation status, and the Secretary of Education has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

OEPNU means the Office of Energy Policy and New Uses.

Peer review is an evaluation of a proposed project performed by experts with the scientific knowledge and technical skills to conduct the proposed work whereby the technical quality and relevance to the program are assessed.

Prior approval means written approval evidencing prior consent by an authorized departmental officer (as defined in this section).

Program means the Biodiesel Fuel Education Program.

Project means the particular activity within the scope of the program supported by a grant award.

Project director or *PD* means the single individual designated by the grantee in the grant application and approved by the Secretary who is responsible for the direction and management of the project, also known as a principal investigator for research activities.

Project period means the period, as stated in the award document and modifications thereto, if any, during which Federal sponsorship begins and ends.

Secretary means the Secretary of Agriculture and any other officer or employee of the Department to whom the authority involved may be delegated.

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